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§§ 1068, 1069, 4153, 4157; Dec. Dig. § 1050 (1).* 1 Va.-W. Va. Enc. Dig. 592.]

8. Railroads (§ 347 (11)*)—Admissibility—Habits.—In such case the matter and substance of such evidence did not bring it within the rule of admissibility relating to individual habits, as distinguished from character and reputation.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1134-1137; Dec. Dig. § 347 (11).* 5 Va.-W. Va. Enc. Dig. 313.]

9. Evidence (§ 588*)—Weight—Physical Facts.—Where the undisputed physical facts clearly established by the evidence are contradicted by the oral testimony of the witnesses, such testimony must be disregarded.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2437; Dec. Dig. § 588; Witnesses, Cent. Dig. § 1164.* 5 Va.-W. Va. Enc. Dig. 322.]

Error to Circuit Court, Fauquier County.

Action by E. M. Mason against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed, and cause remanded for new trial.

Moore, Keith, McCandlish & Hall, of Fairfax, and *R. B. Tunstall*, of Norfolk, for plaintiff in error.

Grimsley & Miller, of Culpeper, and *A. D. Kelly*, of Remington, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* DAVIDSON'S ADM'R.

June 8, 1916.

[89 S. E. 229.]

1. Street Railroads (§ 81 (2)*)—Injuries—Basis for Recovery.—That a street car company employed and retained a careless motorman furnishes no basis for recovery for the death of one run down by a street car, but some affirmative negligence must be shown.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 177; Dec. Dig. § 81 (2).* 10 Va.-W. Va. Enc. Dig. 359.]

2. Appeal and Error (§ 232 (1)*)—Objections Not Made Below.—Though defendant sought to have the jury instructed to disregard a count of the declaration, he cannot, having failed to urge it below, attack the count on appeal as uniting good and bad grounds for recovery.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1368, 1430; Dec. Dig. § 232 (1); Trial, Cent. Dig. §§ 691, 692.* 1 Va.-W. Va. Enc. Dig. 547.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Appeal and Error (§ 662 (3)*)—Bill of Exceptions—Conclusiveness.—The bill of exceptions is conclusive on appeal as to what occurred at the trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2852, Dec. Dig. § 662 (3).* 5 Va.-W. Va. Enc. Dig. 367.]

4. Trial (§ 412*)—Objections—Exceptions—Waiver.—Where defendant, after the overruling of its objection to testimony, cross-examined the witness, and after its motion to strike the witness' testimony was overruled and exception taken, participated in the examination of other witnesses testifying to the same matters and offered rebutting evidence, but reserved no further exception, the original exception was not waived.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 182, 974-977; Dec. Dig. § 412.* 5 Va.-W. Va. Enc. Dig. 319.]

5. Street Railroads (§ 113 (1)*)—Negligence—Evidence—Admissibility.—In an action for the death of a child run down by a street car, evidence of the reputation of the motorman in charge of the car for negligence is inadmissible.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 229, 231-233; Dec. Dig. § 113 (1).* 5 Va.-W. Va. Enc. Dig. 313.]

Error to Hustings Court of Richmond.

Action by Davidson's administrator against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

H. W. Anderson, Thos. P. Bryan, and A. B. Guigon, all of Richmond, for plaintiff in error.

Hunsdon Cary, of Richmond, for defendant in error.

DE BAUN'S EX'X *v.* DE BAUN et al.

June 8, 1916.

[89 S. E. 229.]

1. Husband and Wife (§ 117*)—Separate Estate—Statutes—Property Devised.—Under the New Jersey act of March 25, 1852 (P. L. p. 407), a married woman took the legal title to property conveyed or devised to her, and not simply the equitable title thereto.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. §§ 418-421, 423; Dec. § 117.* 7 Va.-W. Va. Enc. Dig. 195.]

2. Husband and Wife (§ 43*)—Separate Estate—Loan to Husband.—When a wife having legal title to her separate estate loaned money thereof to her husband in 1869 and 1870, taking his notes for its re-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.